

App. No. 10/716,691  
Amdt. Dated August 15, 2005  
Reply to Office Action of June 15, 2005  
Atty. Dkt. No. 8591-112

### REMARKS/ARGUMENTS

This reply is responsive to an office action mailed on June 15, 2005. Reconsideration and allowance of the application and presently pending claims 1-18 are respectfully requested.

#### Present Status of the Patent Application

Claims 1-18 remain pending in the present application. Claims 1-18 have been rejected.

#### Response to Claim Rejections Under 35 U.S.C. §103

Claims 1-18 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable over Howington (US PG Pub. No. 2002/0152120) in view of LaDue (US Pat. No. 5,889,474). Applicant respectfully traverses this rejection.

#### *Independent Claim 1*

Independent claim 1 is allowable for at least the reason that Howington and LaDue, in combination or alone, do not disclose, teach, or suggest "continually monitoring movement of the guest over time within the confined area" or "creating reports on the demographics and continuous movements of the guests."

In the Office Action, it is acknowledged that Howington fails to teach or fairly suggest continuous monitoring, but it is stated that Howington allegedly teaches "monitoring movement of the guest over time within the confined area" and "creating reports on the demographics and movements of the guests."

In this regard, and with reference to the teaching of the Howington patent, the Office Action has cited paragraphs [0022] and [0036]:

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[0022] ... Patron information includes a wide variety of data including ***tracking patrons throughout the casino and any attached resort attractions***, tracking gaming, credit restaurant, recreational and retail transactions...

[0036] [As mentioned earlier, many casinos also employ data gathering techniques (e.g., magnetic swipe cards at each machine) for identifying a patron and] associated personal information, ***the patron's location within the casino***, that patron's wagering characteristics, that patron's affiliation with other groups or patrons, promotional items or comps related to the patron, and that patron's other activities related to arriving at, enjoying and departing from the casino. Embodiments of the present invention contemplate sharing of the patron related information with the machine management database information described earlier. The sharing of this information allows scores for and evaluation of games and players. Game and player-related relationships may also be compared on any basis such as game type, denomination, location, group, ***age, sex, status, and club level***. ...

***(Emphasis added by the Examiner. [ ] added for the response.)***

As can be verified from a review of these cited portions of Howington, there is no teaching or disclosure of "monitoring movement of the guest over time within the confined area." Howington merely discloses at paragraph [0036] "data gathering techniques (e.g., magnetic swipe cards at each machine) for identifying a patron ..., the patron's location within the casino ..." Using this system, the **only** time the location of the patron is known occurs when the patron uses their card at a gaming machine, casino attraction, restaurant, or for any other transaction. The movements taken by the patron when moving from a first known location to a second known location is **not** identified by the Howington system. Locations visited by the patron that do not involve the use of this card are **not** identified, or for that matter, any location between machines where the patron's card is swiped. The current location of the patron is only as good as his most recent use of his card, which may be currently, minutes ago, or even hours ago. Furthermore, Howington makes no suggestion or teaching of associating any time with the activities of the patrons, such as time stamping. Howington is merely

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concerned with which activities the patron participated in, not when the patron participated in them or where the patron traveled between the machines where a card swipe took place. Therefore, Howington does not disclose "monitoring movement of the guest over time within the confined area".

As can be further verified from a review of these cited portions of Howington, there is no teaching or disclosure of "creating reports on the demographics and movements of the guests." Howington merely discloses the use of magnetic swipe cards or the like for identifying a patron at a particular location, such as a gaming machine, casino attraction, restaurant, or other location where they might make a transaction with their card. This information, at best, could provide reports showing a chronological listing of the locations the patron visited using their card, but would **not** be able to show the actual movement of the patron between these locations or any locations they visited without using their card. For instance, a guest merely observing the other players and not making any transactions with their card would not be distinguishable from a guest not physically located in the casino. To actually track "movements of the guest", Howington would need to add a significant number of data collection devices for patron data 910 (FIG. 9) throughout the casino that the guest would be required to swipe their card at when passing. These extra devices would not only restrict movement about the casino (very undesirable for the casino), but would also be a nuisance and inconvenience for the guest. Therefore, Howington does not disclose "creating reports on the demographics and movements of the guests".

Accordingly, the rejection is deficient in these areas. Notwithstanding, the undersigned has reviewed the entirety of the Howington patent and has failed to identify any such teachings anywhere within this reference. Accordingly, the Howington patent fails to teach or disclose the elements of claim 1 as referenced by the Examiner

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(excluding the "continually" and "continuous" references), and the rejection of claim 1 should be withdrawn.

The Office Action combines LaDue with Howington to allegedly teach the continuous monitoring aspect. However, Applicant submits that the combination of these two references is improper. The Examiner must establish some suggestion or motivation to modify or combine the documents and establish that a reasonable expectation of success. (MPEP 2143)

Regarding the suggestion or motivation to combine the references, the Office Action states the following: "because detailed and continuous data on a patron's movements in the setting Howington envisions could clearly be mined to further Howington's stated goals of improving customer service and targeted marketing." This statement provides no insight into how the "teachings" of LaDue could be combined with the "teachings" of Howington, only with the "setting" of Howington. Merely stating that something would be useful in the Howington environment does not shown any specific suggestion or motivation from Howington. It is, of course, not permissible to use hindsight, after a review of Applicant's disclosure, to provide the missing motivation or suggestion to combine. Howington merely suggests using the described transactional data for this purpose and does not suggest using any other data for this purpose. "Improving customer service and targeted marketing" is a broad statement that could encompass many things, but does not provide the suggestion or motivation to add to the Howington system data concerning continuous movement of the patron for combining the teachings of Howington and LaDue.

There is no motivation to combine the Howington and LaDue references for the following reasons: 1) Howington contains no suggestion or motivation to continuously monitor the movement of a person; 2) the Howington system pertains to a confined area (a casino and associated attractions), where the LaDue system is for an

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unconfined area; 3) the Howington system could not reasonably be modified to include the LaDue system, the LaDue system would have to be used in addition to the Howington system; and 4) the cost of adding the LaDue system for each patron of the casino of Howington would be extremely high and probably not viable in the casino management environment.

Regarding the reasonable expectation of success, the Office Action makes no specific remarks. Applicant submits that there is not a reasonable expectation of success for the following reasons: 1) the GPS of the LaDue system may not work inside the casino building of Howington as GPS is designed to be used out of doors; 2) the accuracy of the GPS of the LaDue system may not be adequate to pinpoint a location in the casino of Howington with enough accuracy to be useful in monitoring the movement of a patron; and 3) patrons of a casino would probably not consent to the wearing of a device that would constantly reveal their location, not just in the casino but anywhere as suggested by LaDue.

Thus, there is simply no motivation to combine, nor even a suggestion of one. Also, even if the Howington system were somehow made to employ the LaDue GPS arrangement, the result would not be satisfactory (GPS is not operable or at least not intended for use inside a casino building, and the casino patrons would not desire to be continuously tracked between use of the casino machines by a GPS tracking system if it could be somehow made to function with pinpoint accuracy within a casino building). For at least the above reasons, the rejection of claim 1 should be withdrawn.

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### *Independent Claim 7*

Independent claim 7 is allowable for at least the reason that Howington and LaDue do not disclose, teach, or suggest "means for continually monitoring movement of the guest over time within the confined area" or "means for creating reports on the demographics and continuous movements of the guests" as described above regarding claim 1. Accordingly, the Howington and LaDue patents fail to teach or disclose the invention as defined by claim 7, and the rejection of claim 7 should be withdrawn.

### *Independent Claim 13*

Independent claim 13 is allowable for at least the reason that Howington and LaDue do not disclose, teach, or suggest a "module for continually monitoring movement of the guest over time within the confined area" or a "module for creating reports on the demographics and continuous movements of the guest" as described above regarding claim 1. Accordingly, the Howington and LaDue patents fail to teach or disclose the invention as defined by claim 13, and the rejection of claim 13 should be withdrawn.

### *Dependent Claims*

Dependent claims 2-6, 8-12, and 14-18 are believed to be allowable for at least the reason that these claims depend from allowable independent claims 1, 7, and 13, respectively. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

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### CONCLUSION

The other cited art of record has been reviewed, and it is believed that the claims, as amended, patentably distinguish thereof.

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed, rendered moot, and/or accommodated, and that now pending claims 1-18 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned at 619-231-3666.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

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